Symbolic Policies versus European Reconciliation: the Hungarian 'Status Law'

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Chapter 12

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Since the end of the Cold War, painful historical events that could not be openly discussed during Communism have become more salient in public debates throughout Central and Eastern Europe. The border changes and forced population transfers that occurred after the First and the Second World War, and more specifically the plight of the civilians who experienced these traumatic events, have been one of the most contentious issues discussed in the new democratic regimes. The enduring tensions surrounding the situation of the Hungarian minorities are another striking example of the contemporary political consequences of these 'wounded histories'. The redrawing of Hungary's borders in the wake of the dissolution of the Austro-Hungarian monarchy, which resulted in the loss of a large part of its former territory and population[i], is still portrayed as a 'historical injustice' by some parts of the Hungarian society and political leaders. This perception justifies 'symbolic policies' aimed at reinforcing the link with the diaspora, as was made clear as early as 1989 when the Hungarian Constitution was amended to include the following statement of support: 'the Republic of Hungary bears a sense of responsibility for the fate of Hungarians living outside its border and shall promote and foster their relations with Hungary'.

Because of Hungary's history of irredentism and the ambiguous statement of some of its politicians[ii], the situation of the Hungarian minorities has been closely monitored by European organizations since the early 1990s. The main concern of the European Union (EU), the Council of Europe (COE) and the Organization for Security and Cooperation in Europe (OSCE) was originally to stabilize the former Soviet bloc through the diffusion of democratic standards. In the late 1990s, these organizations developed a more ambitious policy aimed at 'reconciling' former adversaries by helping them to 'settle accounts with the past' and to deal with contested memories. Yet national symbolic policies

repeatedly conflicted with European 'reconciliation policies' (Neumayer, 2007b). This chapter presents a case study of such an intervention in a history-rooted conflict, framed as an issue of national minority protection, which opposed Hungary to some of its neighbors (mainly Slovakia and Romania) between 2001 and 2003. The controversy started when the Hungarian parliament passed the Act LXII of 2001 on Hungarians living in Neighboring States, often referred to as 'Status Law' from an earlier draft's title, designed to assist Hungarian minorities. After two years of fierce diplomatic debates, a watered down version of this piece of legislation finally entered into force, only to become void when the neighboring states joined the EU.[iii] Interestingly, this diplomatic conflict quickly reached the European level of government: the Parliamentary Assembly of the COE asked its advisory legal body to assess the conformity of the 'Status Law' with international legal norms. Simultaneously, the OSCE was monitoring the situation and providing its own analysis of the conflict. The EU, in contrast, tried to minimize its involvement in a dispute between three future member states over matters which were not part of the *acquis communautaire,* by deferring to the COE's legal analysis and calling upon the conflicting parties to find a *modus vivendi* in the name of reconciliation.[iv]

The existing literature on the 'conditionality' imposed by the EU on the CEE candidate countries prior to its enlargement has shown that the case of minority protection was very specific in two respects. First, the *acquis communautaire* was non-existent in that field when the EU decided to enlarge, and the standards which have been 'exported' to Central and Eastern Europe in the 1990s actually originate in the COE and the OSCE. Second, there is no consensus among Western European countries as regards the definition of national minorities and the legitimacy of their 'protection' through individual or collective rights (Hughes and Sasse, 2003). That is the reason why European agencies provided an *ad hoc* expertise that combined diplomacy and law through the promotion of 'good neighborly policy', intergovernmental dialogue and regional cooperation. This chapter argues, however, that these elements alone do not allow for a complete picture of the way European organizations tried to solve the Status Law dispute. It is suggested here that cross-references between the COE and the OSCE played a crucial role in the consolidation of notions and categories of analysis which are tenuous from a strictly legal point of view, such as 'kin-minority', 'kin-state' and 'home-

state'. The standards promoted by European organizations remained inherently vague: they allowed for a short-term solution to the dispute but subsequent events showed that 'symbolic policy' still prevailed over 'reconciliation policy' in the relations between Hungary and its co-ethnics across the border.

This chapter is organized as follows. First, it puts the Status Law back in the context of Hungarian symbolic policies and the development of European standards for minority protection after the Cold War. Agenda-setting at the COE and the OSCE is then analyzed to show how the originally bilateral controversy quickly became a 'European problem'. The third part of the chapter underlines that the circulation of European standards between these European agencies was intrinsically ambiguous. At the international level, each organization interpreted these norms according to its own history, identity and resources, while at the national level politicians contested the 'European solutions' that they felt were being imposed on them.

[A] 'Nation policy' and minority protection: the Status Law in context

The Status Law exemplifies the discordance between 'symbolic policy' and European political and legal standards for state behavior. Despite the fact that it was presented by its Hungarian advocates as being perfectly in line with the philosophy of European integration, this piece of legislation was primarily perceived in the neighboring countries as an implicit reversal of the Trianon Treaty.

[B] Hungary's relation to ethnic-Hungarians

Starting from the interwar period, the acceptance of the 'unjust Trianon Treaty' and the relationship with the diaspora has been an important feature of Hungarian domestic politics and foreign policy. The irredentist policy implemented in the interwar period ultimately failed in 1945. Later on, the postwar Communist governments barely mentioned the situation of the Hungarian minorities in neighboring states in keeping with the façade of socialist brotherhood. However, family and cultural ties to the

Hungarian abroad endured and the protests against Ceaucescu's forced assimilation policy in Romania had a galvanizing effect on the opposition to the socialist regime in the late 1980s (Kántor *et al*, 2004). As of 1990, the successive Hungarian governments fully revived the issue of the ethnic-Hungarians in public discourses and diplomatic efforts. Hungary introduced a triple-priority foreign policy which consisted in three overlapping objectives: supporting co-ethnics living in neighboring states ('nation policy'); maintaining good neighborly relations; and joining the EU and NATO ('Euro-atlantic integration'). Although these three policies were officially equal in status, finding a balance between them has been a challenge for every Hungarian government[v]. In order to fulfill their constitutional obligation towards co-ethnics, Hungarian leaders have simultaneously used the bilateral political level (including clauses on national minority protection in all the treaties they signed with neighboring countries)[vi] and the multilateral forums (putting national minority protection back on the agenda of European organizations). A hierarchy developed which favored the 'nation policy' over the other sub-policies in the late 1990s, due to internal governmental preferences and to pressures from organizations representing the diaspora. It is worth noting that the impeding accession to the EU, and the fear that the Schengen regime would create a 'new Iron Curtain' which would effectively cut off Romania, Croatia and Serbia's Hungarian speakers from Hungary was also a main justification for an intensification of Hungary's approach to its co-ethnics.

The policy instrument designed to strengthen the links with ethnic-Hungarians was a piece of legislation passed in June 2001, in a nearly unanimous vote, by the Hungarian parliament. This framework law was due to enter into force in January 2002. It granted special benefits to the ethnic-Hungarians living in Romania, Slovakia, Serbia, Slovenia, Croatia and Ukraine. The 'Status Law' was to provide access to higher education with the same conditions as Hungarian citizens as well as the possibility of obtaining temporary work permits in Hungary, which amounted to a privileged access to the Hungarian labor market and social welfare system. Families whose two children attended Hungarian speaking schools in these countries were to receive a monthly subsidy. These benefits would be available to persons holding 'Certificates of Hungarian Nationality', essentially ethnic identity cards issued on the recommendation of Hungarian minority organizations located beyond the

border. Although the law was meant to encourage ethnic-Hungarians to remain in their homelands, it made the bearers of these certificates legal subjects of Hungarian legislation as well as recognized members of the Hungarian 'nation'. According to the Hungarian authorities, this piece of legislation was perfectly in conformity with the philosophy of European integration because it sought to reduce the significance of territorial borders (Fowler, 2004). More specifically, its proponents argued that it conformed to European standards on national minority protection promoted by the COE and the OSCE.

[B]European standards for minority protection

Since its creation in 1949, the COE has adopted a wide range of legal instruments in the field of human rights protection, most notably the 1950 European Charter of Human Rights and Basic Freedoms. After the dissolution of the Soviet bloc, this agency developed specific standards for national minority protection such as the Framework Convention for Protection of National Minorities adopted in 1995. But this text was the result of a difficult compromise between its member states, some of which have not signed, let alone ratified it (Benoit-Rhomer and Klebes, 2005).

The OSCE, created as a forum for East-West dialogue in the early 1970s, was given a mission of stabilization in post-cold war Europe which included addressing ethnic tensions. During the Cold War, the CSCE[vii] had defended an 'individualist' conception of human rights attached to individuals rather than to groups. After 1989, the participating states repeatedly emphasized the respect of national minority rights as inherent to the promotion of democracy throughout the continent. Yet tensions quickly appeared between the promoters of a traditional conception of sovereignty represented by state rights, and some governments that urged to reformulate this principle in order to guarantee a full protection of national minorities. The Document of the **Copenhagen** Meeting of the CSCE, for example, stated that protecting 'the ethnic, cultural, linguistic and religious identity of national minorities' was necessary to guarantee 'peace, justice, stability and democracy' (CSCE, 1990, Title

IV, paragr. 30) but failed to give a precise definition of the notion of 'national minority'. This fundamental ambiguity weakened the international legal standards subsequently adopted by the OSCE.

In 1992, the Dutch diplomat Max van der Stoel was appointed the first High Commissioner on National Minorities (HCNM) of the OSCE, with the task of providing 'early warning' and 'early action' in regard to tensions involving national minority issues. Because Western democracies were reluctant to grant this institution a say in their own minority policies, and for fear of encouraging separatist movements in Eastern Europe, its scope of action was restricted to minorities 'which present a threat for security'. The construction of international standards by the HCNM was thus based on a restrictive interpretation of what constitutes a 'minority issue' in Western Europe (excluding terrorism, so as to leave Northern Ireland and the Basque Country aside) alongside a pragmatic acceptation of this international legal framework by Eastern Europe states, in the hope of a future integration into European institutions. Van der Stoel developed two parallel approaches to minority protection: the normative path based on the norms of the OSCE and the COE; 'preventive diplomacy' based on confidentiality and, when necessary, on a policy of 'name and shame' whereby the countries which do not respect international norms are publicly singled out (Chandler, 1999).

[A] Agenda setting in European organizations

The timing and methods of the involvement of the European organizations in the conflict over the Status Law between 2001 and 2003 showed a division of labor between these agencies, according to their *raison d'être* and to their tools. The COE occupied the front stage of the diplomatic and the media forums and turned certain notions and principles into legal norms, while the OSCE relied on this legal expertise to act as an intermediary between the Hungarian, Romanian and Slovak governments.

[B]The 'quiet diplomacy' of the OSCE

In 2001, the HCNM played a role of 'broker' of international norms for the countries involved in the dispute over the Status Law. The Hungarian authorities first informed Max van der Stoel that this piece of legislation was being drafted in April 2001. Choosing a gradual approach based on 'quiet diplomacy' (Kemp, 2001), he first paid a visit to the Hungarian government in May 2001 and tried to convince them to use the provisions on minority protection in the existing bilateral treaties to improve the situation of their co-ethnics, instead of passing a new law. A few days before the law was examined by the Hungarian Parliament, van der Stoel sent a confidential letter to the Hungarian Prime minister, Viktor Orbán, asking his government to amend the text.

Yet 92 percent of members of the Hungarian Parliament voted in favor of the initial version of the text on 12 June 2001. In October 2001, a few days after the COE gave its first public analysis of the Status Law *(see below),* Max van der Stoel published a declaration of principles entitled 'Sovereignty, responsibility and national minorities' which stated that unilateral measures taken by states to protect their minorities living in foreign countries can create tensions and should be avoided. He also underlined the necessity to respect state sovereignty. Hungary was not explicitly mentioned in this short analysis (OSCE, 2001). Despite the signing in December 2001 of a Hungarian-Romanian memorandum on the implementation of the Status Law which partially reduced the tensions between these two countries, the new HCNM Rolf Ekeus[viii] still called for major amendments to the Status Law in January 2002.

To achieve this goal, the new HCMN engaged in 'shuttle diplomacy'. He studied each article of the Status Law with representatives of the COE, the three countries in conflict and the organizations representing the Hungarian diaspora, on the basis of proposals for revisions put forward by the Hungarian Foreign Office. The OSCE's position was that 'while keeping in mind that there is some legitimacy to keeping contacts with minorities with whom one has certain cultural and linguistic ties, this has to be done according to the rules'.[ix] In June 2003, the day after the Hungarian Parliament adopted a final, and largely modified, version of the Status Law, the High Commissioner made a final public declaration in which he insisted on the risks of destabilization in the region. This time, he

clearly mentioned Hungary and warned of 'Status Law precedent', for fear that this law might become a model for states which had shown a strong interest in their co-ethnics, like Russia and Serbia.[x]

[B]The COE: legal standards and 'parliamentary democracy'

The long intervention of the COE in the rewriting of the Status Law between 2001 and 2003 shows how Romanian and Slovak delegates tried to give the maximum publicity to this controversy, whereas the Hungarian members of the Assembly were keen to put the Status Law in a regional context and to discuss it behind closed doors.

Just a week after the Hungarian parliament adopted its first version on 19 June 2001, the Romanian delegation at the COE prepared a draft resolution (signed by every Slovak member of the Parliamentary Assembly, except for one ethnic-Hungarian) that prompted the Parliamentary Assembly of the Council of Europe (PACE) to call upon Hungary not to implement the Status Law. Two days later, the Hungarian members of PACE launched a counterattack and submitted several proposals promoting cross-border collaboration to protect the identity of national minorities. The same day, the Romanian Prime minister requested the the COE's Commission for Democracy through Law, also called 'Venice Commission'[xi], to examine the law. On 29 June, the Standing Committee of PACE[xii] decided to refer the Hungarian and Romanian initiatives to the Venice Commission, to report on. On 6 July, the Venice Commission accepted the proposal of the Hungarian Foreign minister, requesting a comprehensive study of the protection of minorities in Europe and rejected the one submitted by the Romanian head of government, asking for an opinion only on the Hungarian law. By agreeing to develop a comparative approach that would not single out Hungary, the Venice Commission toned down its political role and allowed Budapest to save face:

What we do is legal expertise, it is our mission. Of course, it would be wrong to claim that we never take into account political aspects […] since we provide analyses aimed at helping states to adopt Constitutions or laws that respect legal standards. From this perspective, our analysis is never abstract.

We try to understand the reasons for a given disposition and if this disposition is not conform to the standards, we offer to help find a solution that conforms to these standards but is also acceptable in the countries concerned. It is obvious that we keep an eye on the political context. While drafting our report, we took into account sensitivities in Romania and in Hungary. Everyone found in our report, not necessarily what they wanted to hear, but an explanation of each party's positions.[xiii]

The report of the Venice Commission on 'The preferential treatment of national minorities by their kin-state' published in October 2001 thus analyzed several cases of kin-state legislation from a legal point of view (Venice Commission, 2001). It also mentioned the following flaws of the Status Law: its extraterritorial and unilateral dimension; the neglect of the procedures provided by the bilateral treaties; and the discriminatory nature of the socio-economic benefits reserved to ethnic-Hungarians and denied to the other citizens of the neighboring countries. The Venice Commission stressed that differential treatment of citizens of other states could only be truly justified in the areas of education and culture. From September 2001 onward, the Legal and Human Rights Committee of PACE (herein: Legal Committee) had also started to analyze the political and legal aspects of the Status Law. PACE used the report of the Venice Commission not only to evaluate whether the Status Law was conform to international law, but also to urge Hungary to negotiate with its neighbors and to draft a new bilateral treaty, or at least a regulation that would explain the concrete meaning of this piece of legislation. The Venice Commission report was viewed as too partial to Hungary and not detailed enough to serve as guidance for future norms.[xiv] Characteristically, the analysis of the Status Law carried out by PACE was more openly political, and more critical.

This topic evoked fierce debates at the Legal Committee and the initial report drafted by the Dutch rapporteur Erik Jürgens, which called for the complete withdrawal of the law, had to be revised four times until a watered down version was finally adopted. On 31 October 2001, Jürgens asked the Hungarian government to freeze the implementation of the Status Law pending the adoption of his report. The Hungarian administration had initially thought that it would be sufficient to adopt specific regulations over the law's implementation or to sign bilateral agreements with the neighboring

governments to respond to international criticism. Although the Hungarian government announced on 7 June 2002 that it has drafted amendments to the Status Law, the report which was examined by the Legal Committee of PACE on 24 June still called for the withdrawal of the law. Realizing that the problem was the content of the law itself, the Hungarian government informed PACE that it planned to further amend this legislation according to the recommendations made by the Venice Commission. On 26 June 2002, the Legal Committee of PACE dismissed the Jürgens report and repeteadly assigned the rapporteur the task of comparing the Hungarian law against international practice and of assessing the decrees that had been passed by the Hungarian government on 29 December 2001.[xv]

On 2 September 2002, the Legal Committee of PACE was supposed to discuss a revised version of the Jürgens report. Upon proposal by Slovak and Romanian representatives, the report was scheduled to the agenda of the January 2003 Plenary session of PACE. In order to avoid such a high-profile public debate, the Hungarian government promised to revise the Law beforehand. On 18 December 2002, it adopted the basic principles of the amendment of the Status Law but the new draft was rejected by the Legal Committee and the HCNM. Work on the law started over in Budapest. On 27 January 2003, the Slovak and Romanian delegations to PACE urged to put the Status Law on the agenda of the Assembly. The majority rejected it and it was ultimately not included in the program of the session.

On 3 March 2003, the Legal committee of PACE finally adopted the Jürgens report with 22 members voting for the report, 13 abstaining and none voting against it. On 23 June 2003, the amendment of the Status Law on work, health and travel benefits was passed by the Hungarian Parliament by a 53% majority. The law's entire focus was changed to supporting Hungarian language and culture. Nevertheless, the Romanian and Slovak Permanent delegations at PACE insisted that the report be presented at the Assembly's plenary session on 25 June 2003, whereas the Hungarian delegation claimed that submitting to public opinion a dispute involving several states would be contrary to the spirit of the Assembly. PACE finally adopted the Jürgens report on that day with 95 votes pro, 11 votes against and 10 abstentions. A resolution from the Legal Committee asked for further changes to the law and negotiations with the neighboring countries over its implementation.

[A]The models of reconciliation put forward by European organizations: towards normative convergence?

The solutions to the conflict over the Status Law proposed by European organizations rested jointly on some norms of international law (non-discrimination, cooperation, protection of national minorities as part of the protection of human rights) and on more directly political principles ('spirit of reconciliation', 'friendly relations', the importance of dialogue to ease tensions). They established a normative regime built on legally binding instruments as well as on diplomatic practices that define 'European values'. Yet the ambiguity surrounding certain notions and the multiplicity of forums of arbitration allowed each international organization to defend its own interpretation of the conflict and offer slightly different solutions. Differences were particularly visible on two points: the legitimacy of the protection of national minorities; the behavior expected from Central European states.

[B] The legitimacy of the protection of national minorities by the kin-state

The Venice Commission and PACE agreed on the merits of the protection of national minorities, seen as essential to the stability of Europe and as a part of human rights protection. But PACE stated more firmly that this protection is first of all the responsibility of the home-state (i.e. that state where these individuals live).

The Venice Commission wrote: 'Stability and prosperity, it is well known, cannot be achieved without a satisfactory protection of national minorities. Thus, all the bilateral treaties on friendly relations [signed by Hungary with Slovakia and Romania] contain provisions on the protection of the (respective) minorities' (Venice Commission, 2001, p.21). Yet without denying the primary role of the home-states, it justified minority protection by kin-states by 'the need to defend cultural diversity in Europe'. The highly-publicized analysis of the Venice Commission gave a great legitimacy to the idea

that a 'kin-state' may help its 'kin-minority', although these notions don't appear to be firmly rooted in legal doctrine:

The advantage of the [2001 report] was that it was setting some rules. Setting, or rather… identifying, because none of this was invented. It was a field where standards were vague, that is the reason why this was possible. We identified them and we tried to make them clear. It was a new topic…in any case, the international community had neglected [the preferential treatment of kin-minority] although it exists in many Constitutions adopted in the 1980s and it is sometimes expressed in quite strict terms […] It also raised a terminology issue. At the time, we didn't even know which words to use. These words 'kin state', 'kin minorities', some people even said that we invented them. I didn't invent anything. I found that, of course I studied a lot, there were a lot of things on the internet, etc. I read so many articles and books because it was a completely new issue, that's why people said that nothing existed. This is not true, a lot of things existed. I mean, there were things that touched upon the question in an indirect way or through a different angle but a lot of things existed.[xvi]

Similarly, the report of the Legal Committee of PACE adopted on 25 June 2003 stated that 'nobody would wish to gainsay that it is not in the interest of national minorities if an existing kin-state helps citizens belonging to those minorities to be conscious of their identity and to develop it, within the national identity of the state of which they are citizens (PACE, 2003, 45). But the rapporteur highlighted the risk of 'separatism' created by such policies and defined some conditions which have to be met for this protection to be acceptable (first of all, the home-state has to be informed ahead of time and has to agree to the measures proposed by the kin-state).

Similarly, although the High Commissioner on National Minorities of the OSCE used the international norms formalized by the Venice Commission to deliver his own recommendations, his position was more reserved as regards the idea of the 'protection' of citizens of another state. The HCMN's reluctance appeared in his unwillingness to use the terminology of the 'kin-state':

We don't want to legitimize a 'kin-state' perspective for several reasons linked to international law and stability in Europe. It is worth remembering that it is the state's responsibility to protect all the citizens who live on its territory, and even all the non-citizens. We favor multilateral agreements, since organizations like the Council of Europe and the High Commissioner on National Minorities were created after the Second World War to deal with these issues. Moreover, there are bilateral agreements and the International Conciliation and Arbitration Court, so there is really no need for any unilateral decisions.[xvii]

Accordingly, the HCNM's statements clearly underlined the principle of the respect of state sovereignty and the necessity to integrate minorities in their home-state (OSCE, 2001).

[B]The practices expected from European states

The report adopted by the Venice Commission in October 2001 listed the legal norms that European states have to conform to: the respect of territorial sovereignty of states; the principle of *pacta sunt servanda* (treaties must be respected and performed in good faith); the respect of human rights and fundamental freedoms; the prohibition of discrimination. But the models of reconciliation promoted by the COE and the OSCE also called for states to adopt certain forms of behavior: favoring existing multilateral and bilateral instruments over unilateral measures; engaging in dialogue with neighboring countries to negotiate the implementation of these treaties or to jointly establish new measures; accepting the intervention of European institutions to promote 'friendly relations' and a 'spirit of cooperation'.

For the Venice Commission, the existing instruments for the protection of national minorities have to be implemented according to certain rules, like the principle of 'good neighborly relations', in order to fill the gaps of international law:

Certain parts of the Hungarian law were very well received by some members of the Commission and absolutely not accepted by others. For example, the 'Certificate of Hungarian Nationality'... It was a document with anagraphic data, a photo, which could have been used in Hungary as an identity card. The question was: is it acceptable for a state to deliver to foreign citizens an identity document that looks like an identity card? Half of the Commission replied: 'Absolutely not!'. And the other half: 'Why not?' It was difficult to say… leaving the issue of the political link aside, from the point of view of international law, it is quite difficult to answer this question. That's why we fell back on the principle of good neighborly relations: 'do not create tension. I mean, if you know that a given act will provoke tensions, you must at least use a bilateral procedure that exists anyway in minority issues'… so we had to look at all this from quite a broad context.[xviii]

By contrast, the Legal Committee of PACE underlined the sensitivity of national minority issues in Central Europe and openly questioned the motivations of the Hungarian government for drafting this law - thus recalling some of the reproaches formulated by Romania and Slovakia, such as the meddling in their internal affairs and an implicit will to recreate the borders of Greater Hungary. The Jürgens report adopted on 25 June 2003 highlighted the ambiguity of the definition of the term 'nation' in the preamble of the Status Law: 'There is a feeling in these neighboring countries that the definition of the concept of 'nation' in the preamble to the law could under certain circumstances be interpreted – though this interpretation is not correct – as non-acceptance of the state borders which divide the members of the 'nation', notwithstanding the fact that Hungary has ratified several multi- and bilateral instruments containing the principle of respect for the territorial integrity of states, in particular the basic treaties which have entered into force between Hungary and Romania and Slovakia'[xix] (PACE 2003, paragr. 10).

The report also established that the Hungarian authorities violated the principle of non-discrimination. According to Jürgens, giving socio-economic benefits through working permits and inclusion in the healthcare system could not be considered as 'a form of assistance to a kin minority to preserve its identity. It was a form of selection of workers from a foreign country which clearly served the

preferential socio-economic treatment of co-members of the 'nation' (PACE 2003, paragr. 34). The rapporteur concluded his analysis on the idea that a common definition of the 'nation' was missing in Europe and called for the COE to take a further look at the concepts of nation, citizenship and nationality.[xx]

[A]Conclusion

The model of reconciliation designed by the OSCE and the COE to solve the dispute on the Hungarian Status Law was the temporary outcome of a process that had started in the early 1990s, when the protection of national minorities was again put on the agenda of European organizations. Their involvement in this conflict shows that this emerging 'grammar of reconciliation' was built on some principles of international law, but also on notions that were less established from a legal point of view (such as 'kin-state') and on behaviors implicitly or explicitly required from European states (such as 'good neighborly relations'). This case study showed that European institutions played a dual role in these policies of neutralization of conflicts over the past: a role of *framing* when they built a pan-European normative regime, in the case of the Venice Commission; a role of *broker* in the case of the OSCE and PACE, which used these norms to push the conflicting parties to negotiate. These brokers were however not neutral and each European organization introduced its own nuances to these common standards: the more critical approach of the HCNM prevailed over that of the Venice Commission thanks to the willfulness of PACE.

Despite the fact that the dispute over the Status Law found a temporary solution in 2003, several subsequent events have shown that improving the situation of the co-ethnics has remained a high priority for Hungarian foreign policy. In 2005, under strong pressure from the conservative opposition, the socialist government revised its citizenship law, making it easier for ethnic-Hungarians to obtain long-term visas and to get Hungarian citizenship when moving to Hungary. Upon coming back to power in May 2010, a new conservative government took several symbolic measures in the framework of its 'nation policy'. The Hungarian Parliament passed with an overwhelming majority a law that

allows individual ethnic-Hungarians to apply for Hungarian citizenship if they can prove that they are of Hungarian origin and speak the language. A month later, it declared 4 June a 'Day of National Cohesion' to commemorate the Trianon Treaty. These recent examples of 'symbolic politics' illustrate the enduring importance of the relations with the diaspora for Hungarian politicians.

More indirectly, the Hungarian Status Law has also sparked intense discussions on the need to enhance the protection of national minorities at the EU level. This idea was consistently championed by Hungarian representatives, regardless of political affiliations, during the 2002-2003 Convention on the Future of Europe which drafted the European Constitutional Treaty. The reference to "the respect for human rights, including the rights of persons belonging to minorities" in the draft Constitution meant that a legal reference to minority rights was incorporated in the EU's *acquis*. The Reform Treaty, which replaced the failed Constitutional Treaty in 2007, includes the same provision. The controversy over the Status Law, which raised awareness of minority affairs in the early 2000s, undoubtedly played a role in the recent homogenization of the requirements of all European organizations in this area.

[A]References

F. Benoit-Rohmer and H. Klebes (2005) *Le droit du Conseil de l'Europe. Vers un espace juridique européen* (Strasbourg: Editions of the Council of Europe).

D. Chandler (1999), 'The OSCE and the internationalisation of minority rights', in K. Cordell (ed.), *Ethnicity and Democratization in the New Europe* (London: Routledge).

CSCE (1990), *Document of the Copenhagen meeting of the conference on the human dimension of the CSCE*, www.osce.org/odihr/elections/14304, date accessed 13 September 2011.

B. Fowler (2004) 'Fuzzing citizenship, nationalizing political space: a framework for interpreting the Hungarian 'Status Law' as a new form of kin-state policy in Central and Eastern Europe', in Z. Kántor, B. Majtenyi, O. Ieda, B. Vizi and I. Halasz (eds), *The Hungarian Status Law: Nation Building and/or Minority Protection* (Sapporo, Hokkaido University: Slavic Research Center), pp.177-238.

V.-Y. Ghebali, (1996) *L'OSCE dans l'Europe post-communiste, 1990-1996 : vers une identité paneuropéenne de sécurité* (Brussels: Bruylant).

J. Hughes and G. Sasse (2003) 'Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs', *Ethnopolitics and Minority Issues in Europe* 2003(1), http://www.ecmi.de/publications/detail/issue-12003-62/, date accessed 13 September 2011.

Z. Kántor, B. Majtenyi, O. Ieda, B. Vizi and I. Halasz (eds) (2004) *The Hungarian Status Law: Nation Building and/or Minority Protection* (Sapporo, Hokkaido University: Slavic Research Center).

W. Kemp (2001) *Quiet Diplomacy in Action: the OSCE High Commissioner on National Minorities* (The Hague, London: Kluwer Law International).

L. Neumayer (2007a) 'Les institutions européennes comme acteurs de la réconciliation en Europe centrale : une médiation entre droit et politique' in G. Mink and L. Neumayer (eds) *L'Europe et ses passés douloureux* (Paris: Editions La Découverte), pp.195-209.

L. Neumayer (2007b) 'Conclusion : la réconciliation – variations sur un thème européen' dans *L'Europe et ses passés douloureux*, in G. Mink and L. Neumayer (eds) *L'Europe et ses passés douloureux* (Paris: Editions La Découverte), pp.247-260.

OSCE (2001) 'Sovereignty, Responsibility, and National Minorities: Statement by Rolf Ekeus, OSCE High Commissioner on National Minorities'.

PACE (2003) Resolution 1335 (2003), 'Preferential Treatment of National Minorities by the Kin-State: the Case of the Hungarian Law on Hungarians Living in Neighboring Countries ('Magyars') of 19 June 2001'.

PACE (2006), Recommandation 1735 (2006), 'The Concept of "nation"'.

Venice Commission (2001) *The protection of national minorities by their kin-states* (Strasbourg: Council of Europe publishing).

Venice Commission (2007), *Presentation*, http://www.venice.coe.int/site/main/Presentation_E.asp, accessed 13 September 2011.

[i] Since the Trianon Treaty and the Paris Peace Settlement of 1920, large chunks of territories inhabited by multi-ethnic population were transferred from the Hungarian crown to other successor states of the

Habsburg Empire. The population of Hungary is currently 10 million. Of the approximately 2.5 million Hungarian speakers who live outside Hungary in the Carpathian Basin, the vast majority live in Romania (1.4 million) and in Slovakia (500,000).

[ii] The first post-communist president József Antall, for example, famously said upon his election in 1990 that he felt, 'in spirit', the Prime minister of fifteen million Hungarians, thereby including Hungarians across the world in his definition of the Hungarian nation.

[iii] On 18 July 2003, Romania and Hungary settled their differences over the Status Law by agreeing to extend its benefits to all Romanian citizens, whether ethnic-Hungarians or not. On 19 July 2003, Slovakia and Hungary agreed that Hungary would be entitled to grand benefits for the promotion of the cultural and linguistic identity of the Hungarians in Slovakia based upon their bilateral treaty and not upon the Status Law. In December 2003, they signed a bilateral agreement on the educational and cultural support of the Slovak minority living in Hungary and the Hungarian minority living in Slovakia. In both cases, the Status Law became void (in accordance with EU regulation) when the countries joined the EU: on 1 May 2004 for Slovakia and 1 January 2007 for Romania.

[iv] See (Neumayer, 2007a) for a detailed analysis of the EU's intervention in this dispute.

[v] The various Hungarian political parties of course hold slightly different views on the best ways to support ethnic-Hungarians but this topic goes beyond the scope of this paper.

[vi] Such as the 'Basic Treaties' signed with Ukraine (1992), Romania (1995) and Slovakia (1996).

[vii] The Conference for Security and Cooperation in Europe ended with the signature of the Helsinki Act in 1975. It was institutionalized and renamed *Organization* for Security and Cooperation in Europe in 1994 (Ghebali, 1996).

[viii] Ekeus succeeded van der Stoel as HCNM in July 2001.

[ix] Personal interview with the author, HCNM Office, 30 May 2007.

[x] All these documents are reprinted in Kántor *et al*. (2004).

[xi] The Venice Commission is a consultative body established by the COE in 1990. Its members are legal experts nominated by their governments. Its official mission is to 'contribute to the dissemination of the European constitutional heritage, based on the continent's fundamental legal values. [It also

plays a role] in crisis management and conflict prevention through constitution building and advice' (Venice Commission, 2007).

[xii] The Standing Committee of PACE consists of the Chairpersons of national delegations and the Bureau (the President, twenty Vice-Presidents, the Chairpersons of the political groups as well as the Chairpersons of the general PACE Committees).

[xiii] Personal interview with the author, Venice Commission, 22 November 2005.

[xiv] Personal interview with the author, COE, 23 November 2005.

[xv] These decrees regarded the procedures of issuing the Hungarian certificate as well as student benefits, cultural benefits and education.

[xvi] Personal interview with the author, Venice Commission, 22 November 2005.

[xvii] Personal interview with the author, HCNM Office, 31 May 2007.

[xviii] Personal interview with the author, Venice Commission, 22 November 2005.

[xix] The Preamble to the first draft of the Status Law read: 'In order to ensure that Hungarians living in neighboring countries form part of the Hungarian nation as a whole, and to promote their well-being and awareness of national identity within their home country…'. It was replaced in the amended law passed in June 2003 by the following: 'In order for the Republic of Hungary to meet its obligations to Hungarians living outside Hungary and to promote the preservation and development of their manifold relations with Hungary…' (Kántor *et al*, 2004, 508).

[xx] After studying this issue, PACE concluded that it was impossible to agree on a unique definition of the concept of nation that would be common to all member states (PACE, 2006).